In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1484

ROBERT SCHOOP AND WILLIE LEE DAWKINS, PETITIONERS

v.

JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners commenced this action in the United States District Court for the District of Columbia, seeking to enjoin the Attorney General of the United States and the Director of the Federal Bureau of Investigation from enforcing warrants issued in Louisiana under the Federal Fugitive Felon Act, 18 U.S.C. 1073.[1] The state prosecution underlying the Section 1073

[1] The Chief of the Metropolitan Police Department of Washington, D. C., was also joined as a defendant. We have been requested by the Corporation Counsel for the District of Columbia to inform the Court that he joins in the views expressed in this opposition.

warrants involved a charge under the Louisiana Criminal Anarchy statute, La. Rev. Stat. 14:115.

In the district court, petitioners claimed that the Louisiana statute is unconstitutional under the First Amendment and that therefore 18 U.S.C. 1073 cannot be applied to them as a matter of statutory interpretation and constitutional right. In addition, they alleged technical violations and bad faith use of Section 1073. The district court, after initially issuing a temporary restraining order, vacated the restraining order and dismissed the case for lack of jurisdiction over the subject matter. The court of appeals affirmed on the ground that petitioners remained fugitives. At that time, petitioner Dawkins was a fugitive from the Louisiana state charge and from the federal complaint and warrant under Section 1073. Petitioner Schoop, in addition to his fugitive status under those two charges, was also a fugitive from a bench warrant issued by the District Court for the District of Columbia under an unrelated indictment charging him with assault on a police officer.

Petitioner Dawkins thereafter surrendered to the authorities and again sought an injunction. The district court again denied relief, holding that 18 U.S.C. 1073 is constitutional and that the constitutionality of the Louisiana statute should be raised in the first instance in the Louisiana courts. It deemed the case inappropriate for reference to a three-judge panel under *Ex Parte Poresky,* 290 U.S. 30, and *Idlewild Liquor Corp.* v. *Epstein,* 370 U.S. 713.

By the time the case again came before the court of

appeals, the federal warrant against Dawkins had been dismissed. The court of appeals vacated the dismissal of his action and remanded the case to the district court with instructions to dismiss for mootness. Since petitioner Schoop remained at large, the dismissal of his action was summarily affirmed (Pet. App. 3-4).

Subsequently, the federal warrant against petitioner Schoop has also been dismissed. Moreover, the state of Louisiana has dismissed the prosecution against both petitioners and is no longer seeking their removal to Louisiana, either under 18 U.S.C. 1073 or under extradition proceedings. Thus, petitioners have the relief sought in their complaint.

Therefore, we respectfully submit that the case is moot as to both petitioners, and the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1971.

☆ U.S. Government Printing Office: 1971—422-102/576